

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

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| Action: | Be Adopted as Amended and Be Printed Engrossed |
| Vote: | 7 - 0 - 0 |
| Yeas: | Berger, Buckley, Esquivel, Hunt, Roblan, Thatcher, Rosenbaum |
| Nays: | 0 |
| Exc.: | 0 |
| Prepared By: | Bill Taylor, Counsel |
| Meeting Dates: | 6/14 |

WHAT THE MEASURE DOES: Amends Section 10, Article XV of the Constitution of the State of Oregon, the "Oregon Property Protection Act of 2000 (limitations of civil forfeiture of property by the State of Oregon), by clarifying that the property forfeited: (1) Constitutes the proceeds of the crime for which the claimant has been convicted; (2) Was instrumental in committing or facilitating the crime for which the claimant has been convicted; (3) Constitutes proceeds of one or more other crimes similar to the crime for which the claimant was convicted; and (4) Was instrumental in committing or facilitating one or more other crimes similar to the crime for which the claimant was convicted.

Allows forfeiture without conviction of claimant if the forfeiting agency proves the property constitutes proceeds or instrumentality of crime committed by another person and: (a) The claimant took the property with the intent to defeat forfeiture of the property; (b) The claimant knew or should have known that the property constituted proceeds or instrumentality of criminal conduct; or (c) The claimant acquiesced in the criminal conduct in that the person knew of the criminal conduct and failed to take reasonable action to terminate the criminal conduct. Sets the standard of proof for civil forfeiture as the preponderance of the evidence if the property subject to forfeiture is personal property, and clear and convincing evidence if the property is real property. Places the burden of proof on the person claiming cash, weapons or negotiable instruments if these items were found in close proximity to controlled substances or instrumentalities of criminal conduct.

Allows state and local law enforcement to obtain shared proceeds from the United States Department of Justice resulting from the state or local law enforcement's participation in a federal forfeiture. Requires that when the property being forfeited in a criminal forfeiture constitutes proceeds of one or more other similar crimes, that the claimant be notified in writing of those similar crimes and has an opportunity to challenge the seizure. Allows forfeiture without criminal conviction when the property is an abused or neglected animal.

ISSUES DISCUSSED:

- Exemption for the forfeiture of animals because of the statutory protections found in Chapter 167 of the Oregon Revised Code
- Intent to refer SJR 18 B to the voters at the May 2008 primary election
- Protections for innocent owners of property both in the Constitution and in statute

EFFECT OF COMMITTEE AMENDMENT: Changes the date of the election from November 2008 general election to the May 2008 primary election.

BACKGROUND: In 2000, Oregon voters approved Ballot Measure 3 (BM 3), an amendment to the Oregon Constitution, and in doing so drastically changed Oregon's asset forfeiture laws. Prior to BM 3, all asset forfeiture was civil—meaning that a seizing agency had to have probable cause, or a substantial objective basis, to believe that property was related to prohibited conduct. A claimant seeking to avoid forfeiture had to show by a preponderance of the evidence that the property was not related to prohibited conduct.

BM 3 was challenged on the grounds it contained more than one amendment to the Oregon Constitution in violation of Article IV, section 1(2)(d) of the very same Constitution. The Oregon Supreme Court found BM 3 constitutional. *Lincoln Interagency Narcotics Team v. Kitzhaber* (2006).

BM 3 was codified into statute by House Bills 2429 and 3642 in the 2001 legislative session. HB 2429 required that the owner of the property sought to be forfeited be convicted of a crime and that the property either be instrumental in committing or facilitating that crime, or be proceeds of the crime. The burden of proof was placed on the forfeiting agency and elevated to that of “clear and convincing” evidence. The forfeiture revenue was prohibited from being spent for law enforcement purposes, and required that funds were to be used for drug treatment absent another law or ordinance. HB 3642 created criminal forfeiture. The bill required the state to allege in an indictment for criminal act additional “forfeiture” counts regarding the property seized. The state had the burden of proof to show that the property was subject to forfeiture, and the burden of proof was “beyond a reasonable doubt.” HB 3642 had a sunset provision and expired on July 31, 2005.

HB 3457 of the 2005 legislative session reenacted the criminal forfeiture statutes and removed the sunset provision of HB 3642. In civil forfeiture cases, the burden was placed on the state to prove that the property was a fruit or instrumentality of prohibited conduct. Additionally, the state must prove that the property is owned by a person who was convicted of prohibited conduct in any jurisdiction, and that the property was either a fruit or instrumentality of either the crime that the owner was convicted of, or one or more crimes similar to the crime for which the owner was convicted. The burden of proof for personal property (currency, vehicles, etc.) was established as a preponderance of evidence, while the burden of proof for real property (i.e., land or homes) was set at clear and convincing evidence. HB 3457 also provided that if the property is owned by a person other than the one who has been convicted of a crime, that the burden is on the state to show that the person took the property when he or she knew or should have known that the property was proceeds or an instrumentality of prohibited conduct.

6/15/2007 10:46:00 AM

This summary has not been adopted or officially endorsed by action of the committee.

Committee Services Form – 2007 Regular Session